



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of

BATTAGLIA et al.

Atty. Ref.: 5148-4

Serial No. 10/629,905

TC/A.U.: 2621

Filed: July 30, 2003

Examiner: C. Onuaku

For: PORTABLE DATA TRANSFER AND MASS STORAGE DEVICE FOR  
REMOVABLE MEMORY MODULES

\* \* \* \* \*

October 31, 2007

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**INFORMATION DISCLOSURE STATEMENT**

Sir:

Pursuant to 37 C.F.R. 1.56, the attention of the Patent and Trademark Office is hereby directed to the documents listed on the attached PTO-1449. One copy of the non-U.S. Patent documents are attached. It is respectfully requested that the information be expressly considered during the prosecution of this application, and that the documents be made of record therein and appear among the "References Cited" on any patent to issue therefrom.

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The Examiner is hereby advised that the Applicants' parent application 09/149,448, which matured into U.S. Patent No. 6,658,202 (the '202 patent) (cited by the Examiner in an obviousness-type double patenting context) and related U.S. Patent No. 6,987,927 (the '927 patent, a CIP of the '202 patent) were the subject of the litigation *SmartDisk Corporation v. Archos S.A. and Archos Inc.*, Civil Action No. 2-05cv-101-TJW, that was pending in the United States District Court for the Eastern District of

The Examiner is requested to initial the attached form PTO-1449 and to return a copy of the initialed document to the undersigned as an indication that the attached references have been considered and made of record.

This IDS is being filed more than three (3) months after the U.S. filing date AND after the mailing date of the first Office Action on the merits, but before the mailing date of a Final Rejection or Notice of Allowance.

Attached is our check in the amount of \$180.00 in payment of the fee under 37 C.F.R. 1.17(p). Please credit or debit Dep Acct No. 14-1140 as needed to ensure consideration of the disclosed information. A duplicate copy of this paper is attached.

The filing of an Information Disclosure Statement shall not be construed as a representation that a search has been made [37 C.F.R. 1.97(g)], an admission that the information cited is prior art, or is considered to be, material to patentability or that no other material information exists. Further, the filing of an Information Disclosure Statement shall not be construed as an admission against interest in any manner [Commissioner's Notice of January 9, 1992, 1135 O.G. 12-25 at 25].

Texas. The Defendants (Archos) in a June 15, 2007 press release announced that the litigation was settled as follows:

Archos SA and its subsidiary Archos Inc and Smartdisk Inc have signed an amicable agreement regarding a lawsuit involving alleged intellectual property infringement of two patents filed by U.S.-based Smartdisk, Inc. This lawsuit, mentioned in both the 2005 and 2006 Archos reference documents, was filed by Smartdisk in the tribunal of Marshall, Texas, in September 2005.

The settlement provides for the allocation of 250,000 shares of Archos stock to Smartdisk from a capital increase reserved specifically for Smartdisk, pending the approval of the extraordinary general assembly to occur in the 3<sup>rd</sup> quarter 2007.

As a result of their accord, Archos and Smartdisk shall explore opportunities for commercial cooperation in the North American territories.

Attached and listed in the associated PTO/SB/08a are various invalidity/prior art-related documents from the *SmartDisk v. Archos* litigation for the Examiner's consideration. Additionally, various documents are attached which were brought to the applicants' attention in a related European application including observations by a third party concerning the patentability of the invention of a foreign counterpart application. To the extent that the Examiner has not done so already, the Examiner is requested to review the prosecution histories of the '202 and the '927 patents to ensure that all pertinent materials have been considered. From a review of returned, initialed Information Disclosure Statements, it appears that all the references in the '202 and '927 patents have been considered by the Examiner except for U.S. Patent No. 4,837,628. This reference was brought to the Examiner's attention on the PTO-1449 form filed with the application. For the Examiner's convenience, the '628 patent has been identified in the attached PTO/SB/08a form for the Examiner's consideration.

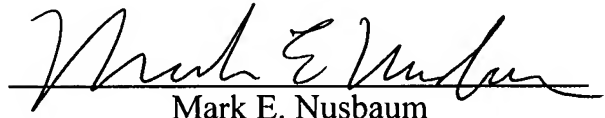
**BATTAGLIA et al.**  
**Serial No. 10/629,905**

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:



Mark E. Nusbaum

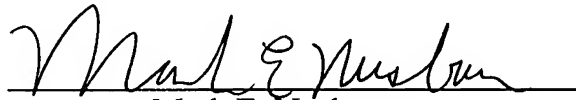
Reg. No. 32,348

MEN:mg  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By:   
Mark E. Nusbaum  
Reg. No. 32,348

MEN:mg  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100

☒ **Terminal disclaimer fee under 37 C.F.R. § 1.20(d) included.** If missing, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140. A duplicate copy of this sheet is attached.

application shall be enforceable only for and during such period that the legal title to such patent granted on the above-identified application shall be the same as the legal title to the above-identified Patent Nos. 6,658,202 and 6,987,927, this agreement to run with any patent granted on the above-identified application and to be binding upon the grantee, its successors or assigns.

Petitioner does not disclaim any terminal part of any patent granted on the above-identified application prior to the expiration date of the full statutory term as presently shortened by any terminal disclaimer of Patent Nos. 6,658,202 and 6,987,927 in the event that they later: expire for failure to pay a maintenance fee, are held unenforceable, are found invalid, are statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321(a), have all claims canceled by a reexamination certificate, or are otherwise terminated prior to the expiration of its statutory term as presently shortened by any terminal disclaimer, except for the separation of legal title stated above.

The evidentiary documents accompanying this document or referred to above have been reviewed by the undersigned and it is certified that to the best of the assignee's knowledge and belief, title is in the assignee seeking to take action.

Check either box 1 or 2 below, as appropriate.

1. ☐ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.
2. ☒ The undersigned is an attorney or agent of record.